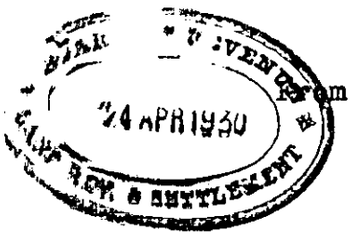
No. 1346

Dated 5-5-20

1A 1395

Ref.on A3-7749-29.

South Kanara Collector's Office,
Camp Udipi, 14th April 1930.



From

G.W.Wells, Esquire, M.A., I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement, Madras.

Sir,

Suits - (South Kanara) - Mangalore - Sub Court - A.S. 382/29 (O.S. 333/27 on the file of the District Munsif, -- Kasargod).

B.P.Mis.No. 3289, L.R., dated 7-11-27.

In its proceedings quoted above, the Board was pleased to sanction the defence of suit O.S.No. 333/27 on the file of the District Munsif, Kasargod, and approved the draft written statement, submitted by the Collector for being filed in Court on behalf of Government (2nd Defendant). The District Munsif dismissed the suit as time barred as contended by Government (2nd defendant) and gave a decree in favour of Government. Please see the enclosed printed copy of the judgment dated -- 27-6-1928.

2. The plaintiff appealed to the Sub Court against the District Munsif's decision. The Sub Judge in appeal A.S.No. 382/29, reversed the decree of the Lower Court and gave a -- decree to the appellant (plaintiff) for Rs. 15/- on account of value of the timber attached with proportionate costs -- amounting to Rs. 30-4-9 excluding the fee of Rs. 25/- of the Government Pleader, Mangalore, in appeal. Please see the enclosed printed copy of the judgment dated 28-1-30.

3. The only question of law involved in the case is -- whether section 59 of the Revenue Recovery Act is applicable to the facts of the case. Government in their written -- statement contended that it is applicable and the District -- Munsif upheld this view. The Sub Judge, however, held that it is not applicable. The Government Pleader, Mangalore,

who was originally of opinion that it is applicable now says that he is inclined to agree with the appellate court and gives his opinion that no purpose will be served by taking the --- matter to the High Court in revision and suggests that as the Potail (1st defendant) is responsible for the suit, he may be made to pay the amount decreed. I enclose a copy of the - Government Pleader's letter Ref. No. 74/29, dated 31-3-30.

4. The matter is one purely of opinion. As, however, the suit is of a trifling nature in which there is no second appeal and the matter is not sufficiently important to be -- taken to the High Court in revision, I agree with the Government Pleader, Mangalore, in thinking that no further action is necessary. I solicit the Board's orders.

5. The Government Pleader suggests that as the Potail (1st defendant) is responsible for the suit, he may be made to pay the costs decreed. The 1st defendant was only an -- acting Potail who is not in service now. I am, however, directing the Deputy Tahsildar to try to collect the amount from the 1st defendant for payment to the plaintiff (appellant).

Your obedient servant,

Letter-from the Government Pleader, Mangalore.
To-The Collector of South Kanara.
Dated-Mangalore, 31st March 1930.
No.- Ref.No.74/29.

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Ref:- Suits - Sub Court - A.S.182/29 (O.S.No.333/27 on the file of the District Munsiff's Court, Kasargod.)

Your Ref.A3-7749-29, dated 11th February 1930.

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I have sent herewith certified copies of the decree and judgment. I am afraid no 2nd appeal lies as the amount involved is less than Rs.500/-.

2. The only question of law involved is whether section 59 of the Revenue Recovery Act is applicable to the facts of this case. The appeal court has held that it is not applicable and I am inclined to agree with the appellate Court.

3. It was the duty of the Potail to redeliver the attached timber. He says he has done so but he has not a voucher.

4. I think the best course would be to make the Potail pay the amount decreed.

5. I am of opinion that no purpose will be served by taking the matter to the High Court in Revision.

6. I have spent Rs.8-11-0 for certified copies of decree and judgment. I request that amount and also my fees Rs.25/- may be sent to me at an early date.

READ AGAIN B. P. No. _____, dated _____ 192

" " " _____, " _____ 192

READ ALSO :—

Register No. _____, From the A 13957/30, No. _____, dated _____ 192 2

" " _____, " " _____, " _____, " _____ 192

" " _____, " " _____, " _____, " _____ 2

Scrib (S. Nadar) Mayalam Rules -
No. 382/2 - Advocate-man - Attachment -
Revision

A 1355/88

To A.S

The Collectors letter is submitted for orders.

2. The question for consideration is whether a revision petition to the high Court is necessary.

3. The facts of the case are given in the judgment of the Dt. Munsiff's Court. The Dt. Munsiff framed the issues & decided the I Defendant the Plaintiff, but dismissed the suit with the costs of Govt. on the ground that the suit is barred by limitation under Sec 59 of the Revenue Recovery Act. In appeal the Subordge held that Sec 59 of the Revenue Recovery Act did not apply to the facts of the case but only the general law of limitation. The G.P. has since changed his opinion and thinks that the view of the appellate court is correct. The point is not clear

matter of the sum is far below Rs 500
the appeal to the High Court does not
lie under Sec 102 of the Civil Procedure Code 1872. See Mulla's IV edn
Code. And as observed by the
Collector, the matter does not appear para 4. p2 of
to be sufficiently elaborated to be
the subject of revision under Sec 115 Code 1,25 Mulla's IV edn.
of the Civil Procedure Code. The Board
may do agree with the Collector in
considering that no jurisdiction para 4. p2 of
is exercised

The Arrears in question were not the arrears of land revenue Strictly
and properly so called but only arrears of abkari revenue which
are recoverable in the same manner as the Arrears of land revenue
an expression which has been the subject of judicial interpretation
Please see the note at pp 6 & n.1 of Bl. in 719 of 25.3.26 This clear that what (J)
is imported is the machinery and the procedure provided in the Rev. Rec Code for the
Collection of Arrears but not the peculiar features which attach to
Land revenue alone - e.g. Sale free of incumbrances. 6 months period
of limitation vide the Ad Generals opinion at page 20. (J)
The Sub Courts Judgments Correct. There is no case to go up
in revision The Board may agree with the Coll. on merits Govt
26.4.30 have no case

1st defendant was absent at the trial and his valid had no instructions - no evidence was adduced on behalf of 2nd. It seems that the logs of timber were handed over to the plaintiffs by the 1st Defts agent. No useful purpose will be served by leaving the matter to the High Court the collection view may be accepted

5 — 9-4-30